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Attorneys for USA Commercial Mortgage Company

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND,
 LLC,
 Debtor.

**USACM'S STATEMENT
 RESPONDING TO MOTION TO
 APPROVE SETTLEMENT WITH DEBT
 ACQUISITION COMPANY OF
 AMERICA V, LLC**

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

**Date: February 20, 2009
 Time: 9:30 a.m.**

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1 USA Commercial Mortgage Company (“USACM”), by and through its counsel Dorsey &
 2 Whitney, LLP, provides the following statement responsive to the Motion to Approve Settlement
 3 with Debt Acquisition Company of America V, LLC [Docket No. 6770] (the “Motion”), filed by
 4 Geoffrey L. Berman as Trustee of the USACM Liquidating Trust (the “Trust”).

5 1. On April 16, 2006, USACM filed a voluntary petition for relief under chapter 11 of
 6 the Bankruptcy Code. USACM continued to operate its business as debtor-in-possession pursuant
 7 to sections 1107(a) and 1108 of the Bankruptcy Code.
 8

9 2. On January 8, 2007, this Court entered its Order Confirming the Debtors’ Third
 10 Amended Joint Chapter 11 Plan of Reorganization (the “Confirmation Order”).

11 3. The Debt Acquisition Company of America V, LLC (“DACA”) appealed the
 12 Confirmation Order (the “Appeal”) and that Appeal remains pending before the United States
 13 Court of Appeals for the Ninth Circuit (the “Ninth Circuit”).
 14

15 4. Since the filing of the Appeal, USACM has been dissolved as a Nevada
 16 corporation, but USACM continues to wind down its operations in accordance with state law. As
 17 part of the winding-down, USACM was and remains a party to the Appeal. *See Asset Purchase*
 18 *Agreement*, pp. 1-2 (Exhibit 1 to the Motion).

19 5. The Asset Purchase Agreement attached as Exhibit 1 to the Motion anticipates that
 20 USACM will agree to dismissal of the Appeal, and to pay its own fees and costs associated with
 21 the Appeal. *Id.*
 22

23 6. Although not provided formal notice of the present Motion, USACM discovered
 24 the Motion in its investigation of the status of the Appeal, which had been scheduled for oral
 25 argument by the Ninth Circuit on March 12, 2008. *See* Certificate of Service [Docket No. 6773];
 26 Post Effective Date Official Service List [Docket No. 5599].¹
 27

28 ¹ On February 11, 2009, the Ninth Circuit filed an Order vacating the submission of the Appeal pending the outcome of the hearing before this Court.

1 7. Based on the representations made by the Trust with respect of the Asset Purchase
2 Agreement and USACM's agreement that appeal should be dismissed, USACM does not object to
3 the Motion.

4 Respectfully submitted this 13th day of February, 2009.

6 /s/ Annette W. Jarvis
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